

Filed for Record at the Request of:

When Recorded Return to:

Name: Bainbridge Island City Clerk
Address: 280 Madison Avenue N.
Bainbridge Island, WA 98110 – 1812

Document Title: Ordinance No. 2011-03
Grantor's Name: City of Bainbridge Island
Grantee's Name: Wakazuru, K&N
Wakazuru, K&N
Wakazuru, K&N
Wakazuru, K&N
Wakazuru, K&N
Wakazuru, K&N
Junes Place LLC
Devin, Daniel
Sears, Larry C & Kathleen
Strehlow, Nancy Lee Trustee
Partin, William & Pamela
Scott, Roger & Cindy
Keller, Randolph & Victoria
Jacobson, Robert & Caroline
Lee, Kevin & Susan
Killpack, Steven & Winder, Philippa

Tax Parcel #: 4155-000-062-0307
4155-000-096-0000
4155-000-063-0207
4155-000-095-0100
4155-000-064-0008
4155-000-094-0101
4155-000-065-0205
4155-000-065-0403
4155-000-067-0005
4155-000-069-0102
4155-000-071-0009
4155-000-073-0007
4155-000-074-0006
4155-000-075-0005
4155-000-076-0004
4155-000-077-0003

Abbreviated Legal Descriptions(s)

Gov't Lot 2, Sec.35 and Gov't Lot 1, Sec.26 T.26N., R.2E., W.M.
MADISON BEACH - 4155-000-062-0307 – (Wakazuru)
LOT 62, MADISON BEACH, ACCORDING TO PLAT THEREOF RECORDED IN
VOLUME 5 OF PLATS, PAGE 14, RECORDS OF KITSAP COUNTY,
WASHINGTON

Gov't Lot 1, Sec.26 T.26N., R.2E., W.M.
MADISON BEACH - 4155-000-096-0000 – (Wakazuru)
LOT 96, MADISON BEACH, ACCORDING TO PLAT THEREOF RECORDED IN
VOLUME 5 OF PLATS, PAGE 14, RECORDS OF KITSAP COUNTY,
WASHINGTON.

Gov't Lot 2, Sec.35 and Gov't Lot 1, Sec.26 T.26N., R.2E., W.M.
MADISON BEACH - 4155-000-063-0207 – (Wakazuru)
LOT 63, MADISON BEACH, ACCORDING TO PLAT THEREOF RECORDED IN
VOLUME 5 OF PLATS, PAGE 14, RECORDS OF KITSAP COUNTY,
WASHINGTON.

Gov't Lot 2, Sec.35 and Gov't Lot 1, Sec.26 T.26N., R.2E., W.M.

MADISON BEACH - 4155-000-065-0403 – (Devin)

PARCEL I: RESULTANT PARCEL A OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 9411030173; BEING THAT PORTION OF MADISON BEACH AS PER PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 14, RECORDS OF KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: LOT 91, EXCEPT THE WESTERLY 25.00 FEET THEREOF; THE WESTERLY 17.00 FEET OF LOT 92; LOT 67, EXCEPT THE WESTERLY 25 FEET THEREOF; AND LOT 66, EXCEPT THAT PORTION THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 66; THENCE N0°28'00 W ALONG THE EASTERLY LIMITS OF SAID LOT 66, A DISTANCE OF 78.55 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING N0°28'00 W ALONG THE EASTERLY LOT LIMITS, A DISTANCE OF 121.38 FEET TO THE SOUTHERLY MARGIN OF MOUNTAIN VIEW LANE; THENCE ALONG SAID SOUTHERLY ROAD MARGIN ON A CURVE TO THE LEFT, THE CENTER OF WHICH BEARS S0°28'00 E, HAVING A CENTRAL ANGLE OF 6°00'36 , AND A RADIUS OF 280.12 FEET, AN ARC DISTANCE OF 29.38 FEET; THENCE S14°13'06 E, A DISTANCE OF 123.38 FEET TO THE TRUE POINT OF BEGINNING. PARCEL II: THE EASTERLY 18 FEET OF LOTS 65 AND 93, MADISON BEACH, AS PER PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 14, RECORDS OF KITSAP COUNTY, WASHINGTON.

Gov't Lot 2, Sec.35 and Gov't Lot 1, Sec.26 T.26N., R.2E., W.M.

MADISON BEACH - 4155-000-067-0005 – (Sears)

THE WEST 25 FEET OF LOT 67 AND 91 AND ALL OF LOTS 68 AND 90, MADISON BEACH, ACCORDING TO PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 14, IN KITSAP COUNTY, WASHINGTON.

Gov't Lot 2, Sec.35 and Gov't Lot 1, Sec.26 T.26N., R.2E., W.M.

MADISON BEACH - 4155-000-069-0102 – (Strehlow)

LOTS 69, 70, 88 & 89, MADISON BEACH, PER VOLUME 5 OF PLATS, PAGE 14, RECORDS OF KITSAP COUNTY, WASHINGTON; TOGETHER WITH TIDELANDS ADJOINING. (RESULTANT PARCEL OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NO. 200605230722, RECORDS OF KITSAP COUNTY, WASHINGTON.)

Gov't Lot 2, Sec.35 and Gov't Lot 1, Sec.26 T.26N., R.2E., W.M.
MADISON BEACH - 4155-000-071-0009 – (Partin)
LOTS 71, 72, 86 AND 87, MADISON BEACH, ACCORDING TO THE PLAT
RECORDED IN VOLUME 5 OF PLATS, PAGE 14, IN KITSAP COUNTY,
WASHINGTON; TOGETHER WITH THAT PORTION OF VACATED POINT
MONROE DRIVE AS ATTACHES PER OPERATION OF LAW AND AS
DESCRIBED UNDER AUDITOR'S FILE NO. 200405250267; EXCEPT FOR THAT
PORTION CONVEYED TO BAINBRIDGE ISLAND FOR RIGHT OF WAY UNDER
AUDITOR'S FILE NO. 200405250268, RECORDS OF KITSAP COUNTY,
WASHINGTON.

Gov't Lot 2, Sec.35 and Gov't Lot 1, Sec.26 T.26N., R.2E., W.M
MADISON BEACH - 4155-000-073-0007 – (Scott)
LOTS 73 AND 85, MADISON BEACH, ACCORDING TO THE PLAT RECORDED
IN VOLUME 5 OF PLATS, PAGE 14, IN KITSAP COUNTY, WASHINGTON;
TOGETHER WITH THAT PORTION OF VACATED POINT MONROE DRIVE AS
ATTACHES PER OPERATION OF LAW AND AS DESCRIBED UNDER
AUDITOR'S FILE NO. 200405250267; EXCEPT FOR THAT PORTION
CONVEYED TO BAINBRIDGE ISLAND FOR RIGHT OF WAY UNDER
AUDITOR'S FILE NO. 200405250269, RECORDS OF KITSAP COUNTY,
WASHINGTON

Gov't Lot 2, Sec.35 T.26N., R.2E., W.M.
MADISON BEACH - 4155-000-074-0006 – (Keller)
PARCEL 1: LOTS 74 AND 84, MADISON BEACH, AS PER PLAT RECORDED IN
VOLUME 5 OF PLATS, PAGE 14, RECORDS OF KITSAP COUNTY,
WASHINGTON. PARCEL 2: AN EASEMENT FOR INGRESS, EGRESS AND
UTILITIES AS DESCRIBED UNDER AUDITOR'S FILE NO. 1027161, BEING A
PORTION OF MADISON BEACH, AS PER PLAT RECORDED IN VOLUME 5 OF
PLATS, PAGE 14, RECORDS OF KITSAP COUNTY, WASHINGTON

Gov't Lot 2, Sec.35 T.26N., R.2E., W.M)
MADISON BEACH - 4155-000-075-0005 (Jacobson
BLK 000 LOT 75 BLK 000 LOT 83 & TL

Gov't Lot 2, Sec.35 T.26N., R.2E., W.M

MADISON BEACH - 4155-000-076-0004 (Lee)

LOT 76 AND 82, MADISON BEACH, ACCORDING TO PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 14, IN KITSAP COUNTY, WASHINGTON; TOGETHER WITH SECOND CLASS TIDELANDS, AS CONVEYED BY THE STATE OF WASHINGTON, SITUATE IN FRONT OF, ADJACENT TO OR ABUTTING THEREON; SITUATE IN THE CITY OF BAINBRIDGE ISLAND, COUNTY OF KITSAP, STATE OF WASHINGTON.

Gov't Lot 2, Sec.35 T.26N., R.2E., W.M

MADISON BEACH - 4155-000-077-0003 – (Killpack/Winder)

PARCEL 1: LOTS 77 AND 81, MADISON BEACH, AS PER PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 14, RECORDS OF KITSAP COUNTY, WASHINGTON; TOGETHER WITH THAT PORTION OF VACATED CUL-DE-SAC AS WOULD ATTACHED BY LAW. PARCEL 2: AN EASEMENT FOR INGRESS, EGRESS AND UTILITIES AS DESCRIBED UNDER AUDITOR'S FILE NO. 1027161 BEING A PORTION OF MADISON BEACH AS PER PLAT RECORDED IN VOLUME 5 OF PLATS, PAGE 14

ORDINANCE NO. 2011-03

AN ORDINANCE of the City of Bainbridge Island, Washington vacating the portion of Point Monroe Drive NE (also known as Mountain View Drive) from the Eastern Boundary of lots 62 and 96 to the Western boundary of lots 77 and 81, of the plat of Madison Beach, as recorded in volume 5, page 14 of plats, records of Kitsap County, Washington.

WHEREAS, on April 25, 2009, most of the owners of lots abutting Point Monroe Drive NE, from the Eastern Boundary of lots 62 and 96 to the Western boundary of lots 77 and 81, of the plat of Madison Beach, recorded in volume 5, page 14 of plats, records of Kitsap County, Washington, filed a petition to vacate the right-of-way of Point Monroe Drive NE (Mountain View Lane on the plat) abutting those lots, as modified by City of Bainbridge Island Ordinance No. 2004-06, which moved the right-of-way on lots 71 and 73 several feet North of its previous location; and

WHEREAS, on July 23, 2009, the City Engineer certified that the petition was legally sufficient, having been signed by over 81% of the owners of property abutting the right-of-way, substantially more than the two-thirds requirement of BIMC 12.34.060; and

WHEREAS, by Resolution No. 2009-18, the City Council set a public hearing before the City Council on the proposed vacation for September 23, 2009; and

WHEREAS, City staff posted, published and mailed notice of the public hearing in accordance with BIMC 12.34.080; and

WHEREAS, the City Council held the public hearing at the scheduled time and continued it to October 28, 2009; and

WHEREAS, the City Council has considered and reviewed the right-of-way vacation Agenda Bills for the September 23, 2009 and October 28, 2009 City Council meetings, together with the documents submitted to the City Council during the public hearings on those dates; and

WHEREAS, the City Council has considered the testimony presented at the public hearing on September 23, 2009 and October 28, 2009; and

WHEREAS, the City Council has considered and reviewed the documents attached to the Agenda Bill for the February 23, 2011 City Council meeting, including but not limited to the Supplemental Staff Report and an inventory of rights-of-way in the City that abut Puget Sound ("Final Staff Report"); and

WHEREAS, the City Council desires to vacate the right-of-way described above, subject to the terms and conditions set forth below in this Ordinance; now, therefore

**THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND, WASHINGTON,
DOES ORDAIN AS FOLLOWS:**

Section 1. Findings, Declarations and Statements--BIMC 12.34.120.A. The City Council adopts the following findings, makes the following declarations and enters the following statements, which address the requirements of BIMC 12.34.120. BIMC 12.34.120.A requires that at least one of three conditions must be present to vacate a street adjacent to fresh or salt water. Each of the alternative conditions is quoted below, followed by the finding, declaration or statement:

- A. *The vacation is sought to enable the city to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, educational purposes, or other public uses (BIMC 12.34.120.A.1).*

By approving the vacation of the right-of-way of Point Monroe Drive NE, as dedicated in the plat of Madison Beach, recorded in volume 5, page 14 of plats, records of Kitsap County, Washington, between the Eastern boundary of lots 62 and 96 of such plat and the Western boundary of lots 77 and 81 of such plat ("Right-of-Way"), the City will transfer title of the Right-of-Way to the owners of lots abutting the Right-of-Way. Thus, the vacation technically is not sought to enable the City itself to acquire the Right-of-Way for the listed public uses and purposes. However, in connection with the vacation, the City will be acquiring a public access easement ("Access Easement") and an emergency easement centered on the public access easement ("Emergency Easement") (collectively, the "Combined Easement"), together with an 8-foot utility easement abutting the Access Easement and Emergency Easement. The Combined Easement is in substantially the same location as the existing paved road that serves the lots, and will be used for (1) public beach and water access from the Eastern terminus of the Right-of-Way to Western terminus of the Right-of-Way, (2) emergency vehicle access and (3) public viewing from the Crossing Easement. Therefore, this criterion is substantially satisfied.

- B. *The City Council, by resolution, declares that the street is not presently being used as a street and that the street is not suitable for any of the following purposes: port, beach or water access, boat moorage, launching sites, park, public view, recreation, or education (BIMC 12.34.120.A.2).*

As noted above, a substantial portion of the Right-of-Way is located outside of the existing paved road that serves the lots. Most of the Right-of-Way is not presently being used as a street. Also, in the Southern portion of the Right-of-Way, where the existing paved road is within or partially within the Right-of-Way, residences, fences and telephone poles are located within the Right-of-Way.

Official beach and water access is available only by traveling West on the Right-of-Way and then crossing the sand spit on the 25-foot easement for access and utilities (Auditor's File No. 1067928) ("25-foot Crossing Easement") to either Puget Sound or Madison Beach Waterway. However, there is a jog in the middle of the Right-of-Way, resulting from a recent right-of-way re-dedication (City Ordinance No. 2004-06 and Auditor's File Nos. 2004055250268/0269), which moved the Right-of-Way several feet North), that interrupts continuous official public access from one end of the Right-of-Way to the other. In other words, there is no continuous public right-of-way from the Eastern terminus of the Right-of-Way to the 25-foot Crossing Easement. For this reason, the Right-of-Way is not suitable for beach or water access.

Given the physical attributes of the sand spit and the fact that the Right-of-Way is parallel to the water, the Right-of-Way is not suitable for a port, boat moorage or launching site. The Right-of-Way also is not suitable for a park, for recreation and for education because it is necessary for access to the lots abutting the Right-of-Way.

The Right-of-Way is suitable for public viewing, but this criterion should not apply to public views from streets running parallel to the water. This criterion was intended to apply to public views from streets that are perpendicular to the water.

Where the waters of Puget Sound or Madison Beach Waterway touch the Right-of-Way, the underlying land and adjacent land is private property, and the public cannot cross or use such private property. Thus, the Right-of-Way is not suitable for beach or water access, boat moorage, launching sites or recreation.

Finally, the Right-of-Way theoretically is suitable for public view and education, but as observed above, the same view and education opportunities will be available from the Access Easement.

In view of the considerations and discussion above, the Right-of-Way in material part is not being used as a street, and the Right-of-Way in its current configuration and in view of the current situation is not suitable for the listed purposes and uses.

Because an ordinance is a higher form of City Council action than a resolution, the declaration required by BIMC 12.34.120.A.2 may be made by this Ordinance.

- C. *The vacation is sought to enable the city to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area to which the street or alley sought to be vacated abuts, had the properties included in the plan not been vacated (BIMC 12.34120.A.3).*

The above-described jog in the middle of the Right-of-Way precludes official public access from the Eastern terminus of the Right-of-Way to the 25-foot Crossing Easement. The Combined Easement will provide improved and continuous public access between these two points. Although, motorized vehicles may theoretically use

the current Right-of-Way, while only non-motorized vehicles and emergency vehicles, may use the Combined Easement, practical public access from the Combined Easement will be “comparable” to or better than the practical access of the Right-of-Way. This comparable public access is adopted by this Ordinance.

Section 2. **Finding--BIMC 12.34.120.B.4.** Pursuant to BIMC 12.34.120.B.4, the City Council finds that:

- A. The vacation of the Right-of-Way is in the public’s interest; and
- B. The Right-of-Way is not suitable for port, boat moorage, launching sites, beach or water access, park, public view, creation or education purposes, for the reasons stated in Section 1 of this Ordinance.

Section 3. **Considerations and determinations--BIMC 12.34.110.** As required by BIMC 12.34.110, the City Council has considered the following criteria of BIMC 12.34.110 to determine whether to vacate the Right-of-Way. Each subsection of BIMC 12.34.110 is quoted below, followed by the City Council’s analysis of the criterion:

- A. *Whether a change of use or vacation of the street or alley will better serve the public.*

As noted in Section 1 of this Ordinance, (1) portions of the Right-of-Way are encroached upon by houses, fences and telephone poles, (2) a substantial portion of the existing paved road is located outside of the Right-of-Way, and (3) the Right-of-Way has a jog in the middle. Consequently, the public will be better served overall by the Combined Easement that will be granted in the approximate location of the existing paved road. The Combined Easement will end at the 25-foot Crossing Easement, which provides direct public access to Puget Sound and Madison Beach Waterway.

- B. *Whether the street or alley is no longer required for public use or public access.*

As noted in paragraph A above and paragraph B of Section 2 of this Ordinance, the Right-of-Way will not be required for public use or public access because the Combined Easement will be granted in connection with the vacation. The Combined Easement will provide public use and access that overall is comparable to the existing public use and access.

- C. *Whether the substitution of a new and different public way would be more useful to the public.*

Again, the Combined Easement, which is a substitution of a new and different public way, will be more useful to the public, for the reasons pointed out in paragraph A above and paragraph B of Section 2 of this Ordinance.

- D. *Whether conditions may so change in the future as to provide a greater use or need than presently exists.*

The Right-of-Way is at the Westerly end of Point Monroe Drive NE and the sand spit. The lots abutting the Right-of-Way either are developed or likely will not be developed, due to lack of space for new septic drainfields and regulatory and environmental restrictions. Therefore, future conditions will not require a greater use or need.

- E. *Whether objections to the proposed vacation are made by owners of private property (exclusive of petitioners) abutting the street or alley or other governmental agencies or members of the general public.*

No governmental agencies have objected to the Right-of-Way vacation. City advisory groups favor the vacation, if the Combined Easement is granted. No owners of lots abutting the Right-of-Way and no members of the general public object to the Right-of-Way vacation.

Section 4. **Vacation.** The following portion of Point Monroe Drive NE is vacated to the owners of the lots abutting the right-of-way as follows:

1. That portion of the right-of-way of Point Monroe Drive NE (Mountain View Lane per plat) as shown on the plat of Madison Beach, recorded in volume 5, page 14 of plats, records of Kitsap County, Washington, situate in Government Lot 1, Section 26 and Government Lot 2, Section 35, all in Township 26 North, Range 2 East, W.M., City of Bainbridge Island, Washington and lying:

a. Between the Northern extension of the East line of lot 62 of said plat of Madison Beach and the Northwesterly extension of West line of lot 70 of said plat of Madison Beach (tax lot nos. 4155-000-062-0307, 4155-000-096-000, 4155-000-063-0207, 4155-000-064-0008, 4155-000-094-0101, 4155-000-095-0100, 4155-000-065-0205, 4155-000-065-0403, 4155-000-067-0005, 4155-000-069-0102); and

b. Between the Northwesterly extension of the East line of lot 74 of said plat of Madison Beach and the Northwesterly extension of the West line of lot 77 of said plat of Madison Beach (Tax lot nos. 4155-000-074-0006, 4155-000-075-0005, 4155-000-076-0004, 4155-000-077-0003); and

2. That portion of the right-of-way of Point Monroe Drive NE as conveyed in the right-of-way deed required by the City of Bainbridge Island Ordinance No. 2004-06 and recorded under Kitsap County Auditor's File No. 200405250268 (lots 71 and 72 of said plat of Madison Beach) (Tax lot no. 4155-000-071-0009).

3. That portion of the right-of-way of Point Monroe Drive NE as conveyed in the right-of-way deed required by the City of Bainbridge Island Ordinance No. 2004-06 and

recorded under Kitsap County Auditor's File No. 200405250269 (lots 73 and 85 of said plat of Madison Beach) (Tax lot no. 4155-000-073-0007).

The right-of-way being vacated is depicted on **Exhibit A**, which is incorporated by reference.

Section 5. **Granting of Easements.** In satisfaction of the required compensation for vacation of the Right-of-Way, the owners of the lots abutting the Right-of-Way vacated in Section 4 of this Ordinance have granted to the City a public access easement of 9 feet in width ("Access Easement"), an emergency easement of an additional 3 feet in width, centered on the Access Easement ("Emergency Easement"), and an additional utility easement of 8 feet in width North of and abutting the Emergency Easement (collectively, the "Public Easement"), in the form of the Point Monroe Drive Public Easement and Agreement attached as **Exhibit B**, which is incorporated by reference. The Interim City Manager is authorized and directed to execute the Public Easements on behalf of the City. The City Clerk is authorized and directed to record a certified copy of this Ordinance and the Public Easements with the Kitsap County Auditor's office.

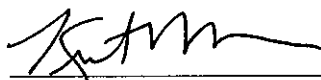
Section 6. **Emergency Easement--Structures and Obstructions.** The Emergency Easement provides that it shall be free from structures, permanent or movable, and obstructions, such as fences, storage units, large rocks and large plants, that are placed or grow after the date of the Emergency Easement. The structures and obstructions as of the date of the Emergency Easement are shown on the pictures attached as **Exhibits C** through **O**, which are incorporated by reference.

Section 7. **Payment of Compensation.** The owners of the lots abutting the Right-of-Way have granted the Public Easement to the City in lieu of payment of compensation for vacation of the Right-of-Way, pursuant to BIMC 12.34.135. The City Council determines that the fair market value of the Public Easement is equal to the fair market value of the Right-of-Way vacated and, therefore, the owners of lots abutting the Right-of-Way are not required to pay compensation for the Right-of-Way pursuant to BIMC 12.34.120, 12.34.140 and 12.34.150.

Section 8. **Effective Date.** This ordinance shall be effective seven (7) days from and after its passage, approval, publication, and posting as required by law.

PASSED by the City Council this 2nd day of March, 2011.

APPROVED by the Mayor this 9th day of March, 2011.



Kirsten Hytopoulos, Mayor

ATTEST/AUTHENTICATE:

Rosalind D. Lassoff
Rosalind D. Lassoff, City Clerk

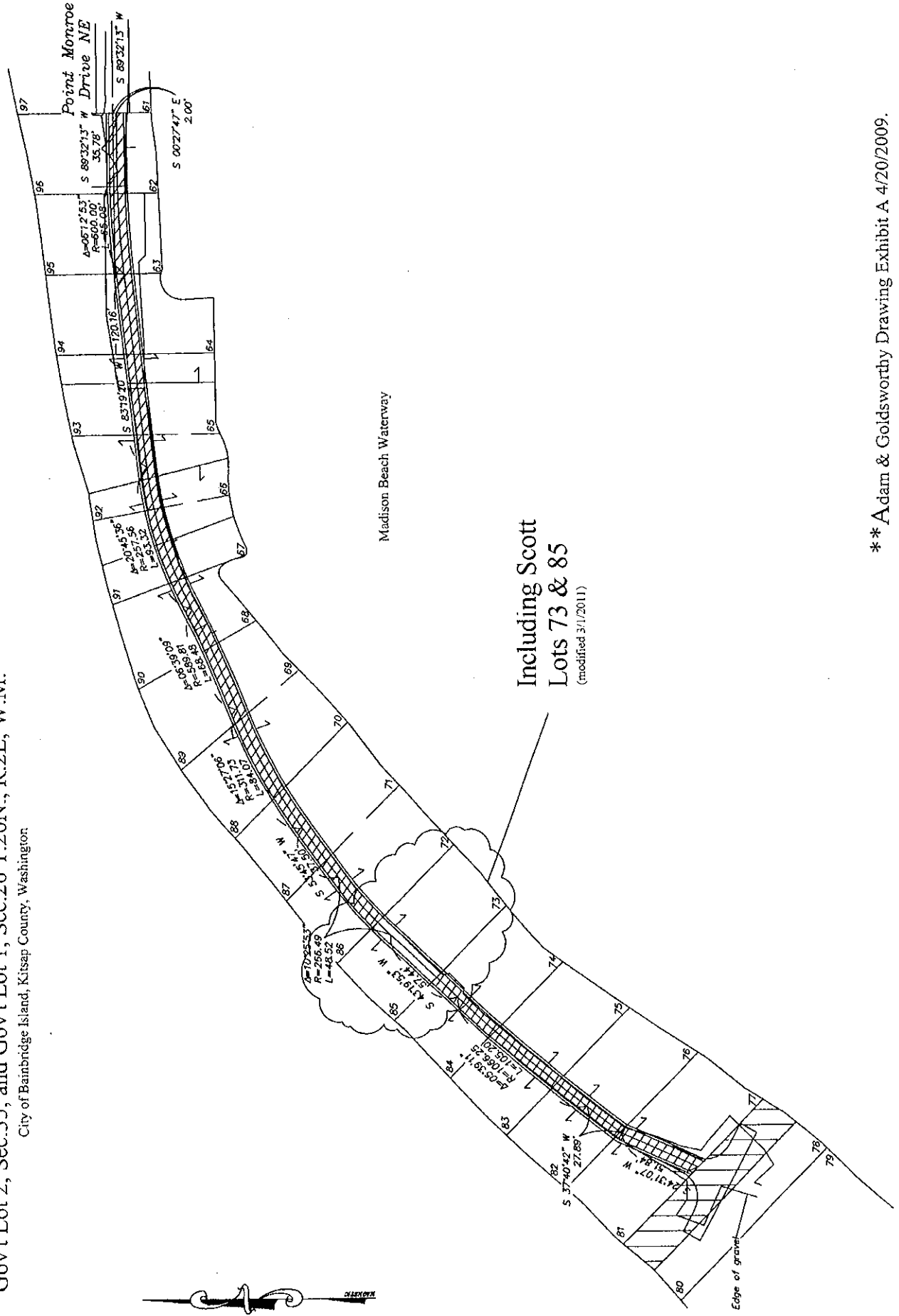
FILED WITH THE CITY CLERK:	February 8, 2011
PASSED BY THE CITY COUNCIL:	March 2, 2011
PUBLICATION:	March 4, 2011
EFFECTIVE DATE:	March 11, 2011
ORDINANCE NO.:	2011-03

EXHIBIT A

MAP OF VACATION AREA

Exhibit A

Right of Way Vacation of Point Monroe Drive NE
Gov't Lot 2, Sec.35, and Gov't Lot 1, Sec.26 T.26N., R.2E, W.M.
City of Bainbridge Island, Kitsap County, Washington



Including Scott
Lots 73 & 85
(modified 3/1/2011)

** Adam & Goldsworthy Drawing Exhibit A 4/20/2009.
Drawing was copied and modified.

EXHIBIT B

FORM OF POINT MONROE PUBLIC EASEMENT AND AGREEMENT

AFTER RECORDING, PLEASE RETURN TO:

Roz Lassooff, City Clerk
City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110

POINT MONROE DRIVE PUBLIC EASEMENT AND AGREEMENT

Grantor(s):

Grantee: City of Bainbridge Island, Washington, a municipal corporation

Short Legal Description:

(Complete legal description on Exhibit A)

Assessor's Property Tax
Parcel/Account Number(s):

Reference Number(s) of
Documents Assigned
or Released: N/A

THIS POINT MONROE DRIVE PUBLIC EASEMENT AND AGREEMENT
("Agreement") is made this ____ day of _____, 2010, by and between _____
("Grantor") and the CITY OF BAINBRIDGE ISLAND, Washington, a municipal corporation
("Grantee"). The parties agree as follows:

1. Grantor's Real Property. Grantor is the fee owner of the real property which is legally described on **Exhibit A**, attached hereto and incorporated herein ("Grantor's Real Property").

2. Grant of Public Access Easement. Grantor, for valuable consideration, the receipt of which is hereby acknowledged, grants, conveys and warrants to Grantee, its successors and assigns, a perpetual, nonexclusive public access easement nine (9) feet in width, as legally described on **Exhibit B**, attached hereto and incorporated herein (April 20, 2009 Private Access and Public Pedestrian Easement by Adam & Goldsworthy, Inc., Land Surveyors), and depicted

on **Exhibit C**, attached hereto and incorporated herein (April 21, 2009 Proposed Easement Areas by Adam & Goldsworthy, Inc., Land Surveying) ("Public Access Easement"). **Exhibit B** describes the Public Access Easement across Grantor's Real Property and the parcels adjoining Grantor's Real Property.

3. Purpose of Public Access Easement. The Public Access Easement is for the purpose, from dawn to dusk, of (1) travel of pedestrians and domestic animals (including horses), (2) operation of non-motorized vehicles, and (3) operation of City utility vehicles.

4. Grant of Emergency and Utility Easement. Grantor, for valuable consideration, the receipt of which is hereby acknowledged, grants, conveys and warrants to Grantee, its successors and assigns, as well as to utility service providers, including but not limited to water, electric, cable and telecommunication service providers, a perpetual, nonexclusive emergency access and utility easement twelve (12) feet in width and centered on the Public Access Easement granted in Section 2 above, as legally described on **Exhibit D**, attached hereto and incorporated herein (April 20, 2009 Emergency Vehicle Access Easement by Adam & Goldsworthy, Inc., Land Surveyors), and depicted on **Exhibit C** ("Emergency and Utility Easement"). **Exhibit D** describes the Emergency and Utility Easement across Grantor's Real Property and the parcels adjoining Grantor's Real Property.

5. Purpose of Emergency and Utility Easement. The Emergency and Utility Easement is for the purpose of (1) operation of emergency vehicles and (2) ownership, construction, installation, operation, access, maintenance, repair, improvement and replacement of existing utility services or future underground utility services. The portion of the Emergency and Utility Easement outside of the Public Access Easement shall be free from above-ground structures, permanent or movable, and obstructions, such as utility poles, fences, storage units, large rocks and large plants, that are placed or grow after the date of establishment of the Emergency and Utility Easement. A photograph of such structures and obstructions existing on the date of establishment of the Emergency and Utility Easement is attached hereto and incorporated herein as **Exhibit E**.

6. Grant of Additional Utility Easement. Grantor, for valuable consideration, the receipt of which is hereby acknowledged, grants, conveys and warrants to Grantee, its successors and assigns, as well as to utility service providers, including but not limited to water, electric, cable and telecommunication service providers, a perpetual, nonexclusive easement for underground public utilities and services eight (8) feet in width North of and abutting the Northernmost edge of the Emergency and Utility Easement ("Additional Utility Easement").

7. Purpose of Additional Utility Easement. The Additional Utility Easement is solely for the purpose of ownership, construction, installation, operation, access, maintenance, repair, improvement and replacement of underground utility services.

8. Grant of Further Utility Easement. Grantor, for valuable consideration, the receipt of which is hereby acknowledged, grants, conveys and warrants to Grantee, its successors and assigns, as well as to utility service providers, including but not limited to water, electric,

cable and telecommunication service providers, a perpetual, nonexclusive easement solely for existing public utilities and existing services on Grantor's Real Property, and located outside of the Emergency and Utility Easement and the Additional Utility Easement, on the date of establishment of such Easements ("Further Utility Easement").

9. Maintenance of Paved Road. Grantor shall maintain the paved road that is located in the Public Access Easement in the condition existing on the date of establishment of the Public Access Easement, or in better condition. The condition of the paved road on the date of establishment of the Public Access Easement is shown on **Exhibit E**.

10. 1971 Joint Easement Agreement. This Public Easement and Agreement shall not affect or impair any of Grantor's existing rights or obligations as set forth in the February 10, 1971 Joint Easement Agreement, except as expressly provided for herein.

11. Effective Date. This Public Easement and Agreement shall take effect upon (1) passage by the City Council of Grantee, on or before March 31, 2011, of an ordinance vacating the right-of-way on Grantor's Real Property pursuant to petition filed with Grantee on April 25, 2009 and (2) execution by an authorized representative of Grantee of this Public Easement and Agreement.

12. Binding Effect. This Public Easement and Agreement and the rights and obligations under it are intended to and shall run with the land and shall benefit and bind the parties and their respective successors and assigns.

13. Good Title. Grantor warrants that it has good title to Grantor's Real Property and warrants Grantee title to, and quiet enjoyment of, the Public Access Easement, Emergency and Utility Easement, Additional Utility Easement and Further Utility Easement conveyed in this Public Easement and Agreement.

14. Recording. Grantee shall record this Public Easement and Agreement with the Kitsap County Auditor, at the cost and expense of Grantee.

15. Complete Agreement. This Public Easement and Agreement represents the complete agreement of the parties regarding the matters described herein. There are no other verbal or written agreements regarding the easement rights and obligations set forth herein, except as contained in this Public Easement and Agreement. This Public Easement and Agreement may only be modified by a written document signed by the parties.

16. Attorneys' Fees. If either party brings any suit or other proceeding arising out of or in connection with this Public Easement and Agreement, the prevailing party (as determined by the court or other authority before which such suit or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorneys' fees and costs.

IN WITNESS WHEREOF the undersigned have executed this Public Easement and Agreement on the dates indicated below.

GRANTOR:

GRANTEE:

CITY OF BAINBRIDGE ISLAND

By: _____

Its: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
_____ is/are the person(s) who appeared before me, and said
person(s) acknowledged that he/she/they signed this instrument and acknowledged it to be
his/her/their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____

(Print Name)

Notary Public in and for the State of Washington.

Commission Expires: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
_____ is/are the person(s) who appeared before me, and said
person(s) acknowledged that he/she/they signed this instrument and acknowledged it to be
his/her/their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____

(Print Name)

Notary Public in and for the State of Washington.

Commission Expires: _____

STATE OF WASHINGTON)
) ss:
COUNTY OF KITSAP)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he/she signed this
instrument, on oath stated that he/she was authorized to execute the instrument, and
acknowledged it as the _____ of the CITY OF BAINBRIDGE
ISLAND, Washington, a municipal corporation, to be the free and voluntary act of such
municipal corporation for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____

(Print Name)

Notary Public in and for the State of Washington.

Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR'S REAL PROPERTY

EXHIBIT B

LEGAL DESCRIPTION OF PUBLIC ACCESS EASEMENT

(Adam & Goldsworthy, Inc. "Private Access and Public Pedestrian Easement," dated April 20, 2009)

EXHIBIT C

**DEPICTION OF PUBLIC ACCESS EASEMENT AND EMERGENCY AND UTILITY
EASEMENT**

(Adams & Goldsworthy, Inc. Survey of "Proposed Easement Areas," dated April 21, 2009)

EXHIBIT D

LEGAL DESCRIPTION OF EMERGENCY AND UTILITY EASEMENT

(Adam & Goldsworthy, Inc., "Emergency Vehicle Access Easement," dated April 20, 2009)

EXHIBIT E

PHOTOGRAPH OF STRUCTURES, OBSTRUCTIONS AND PAVED ROAD

EXHIBITS C through O
STRUCTURES IN EMERGENCY EASEMENT

Exhibit C

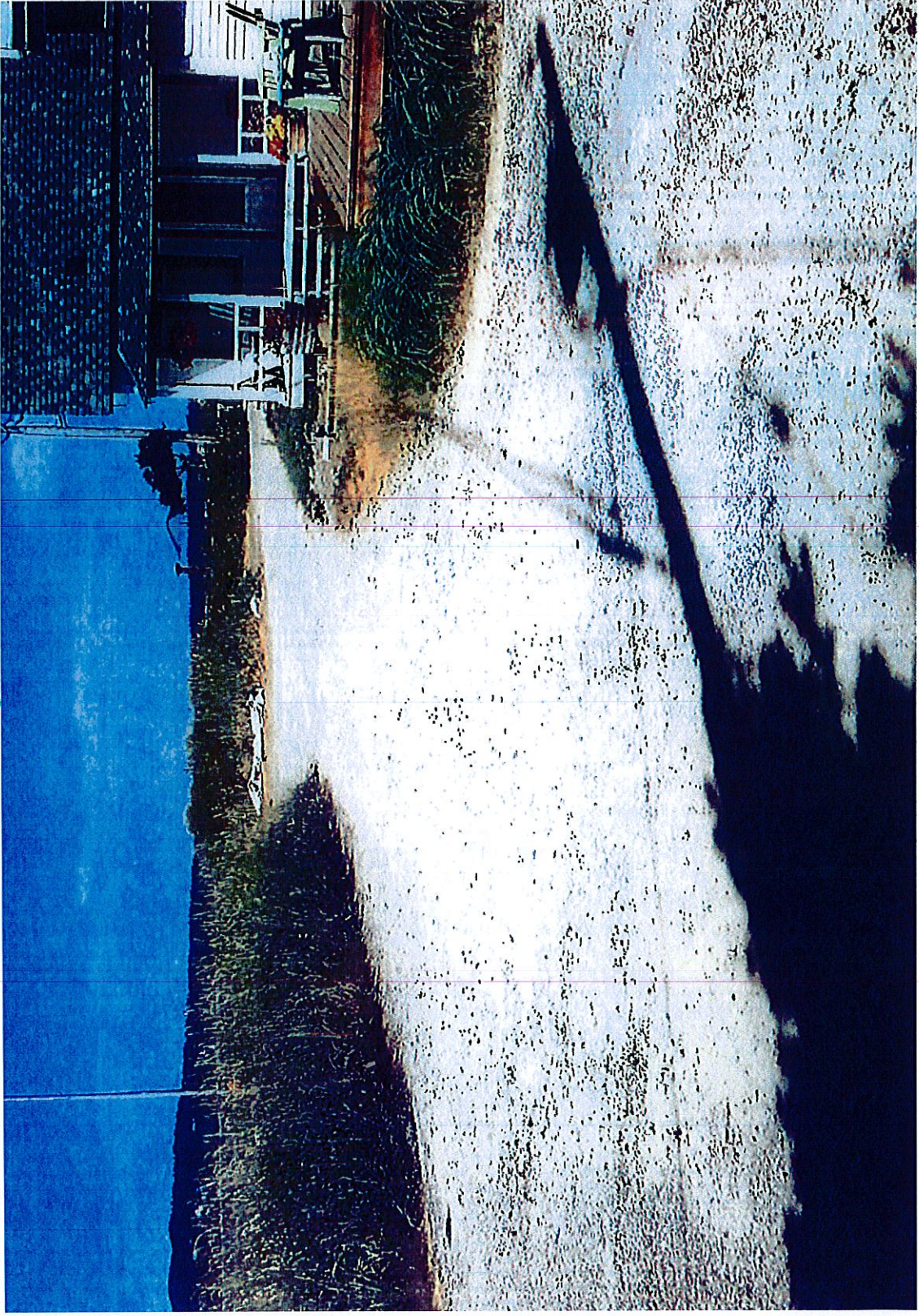


Exhibit D





Exhibit E

Exhibit F

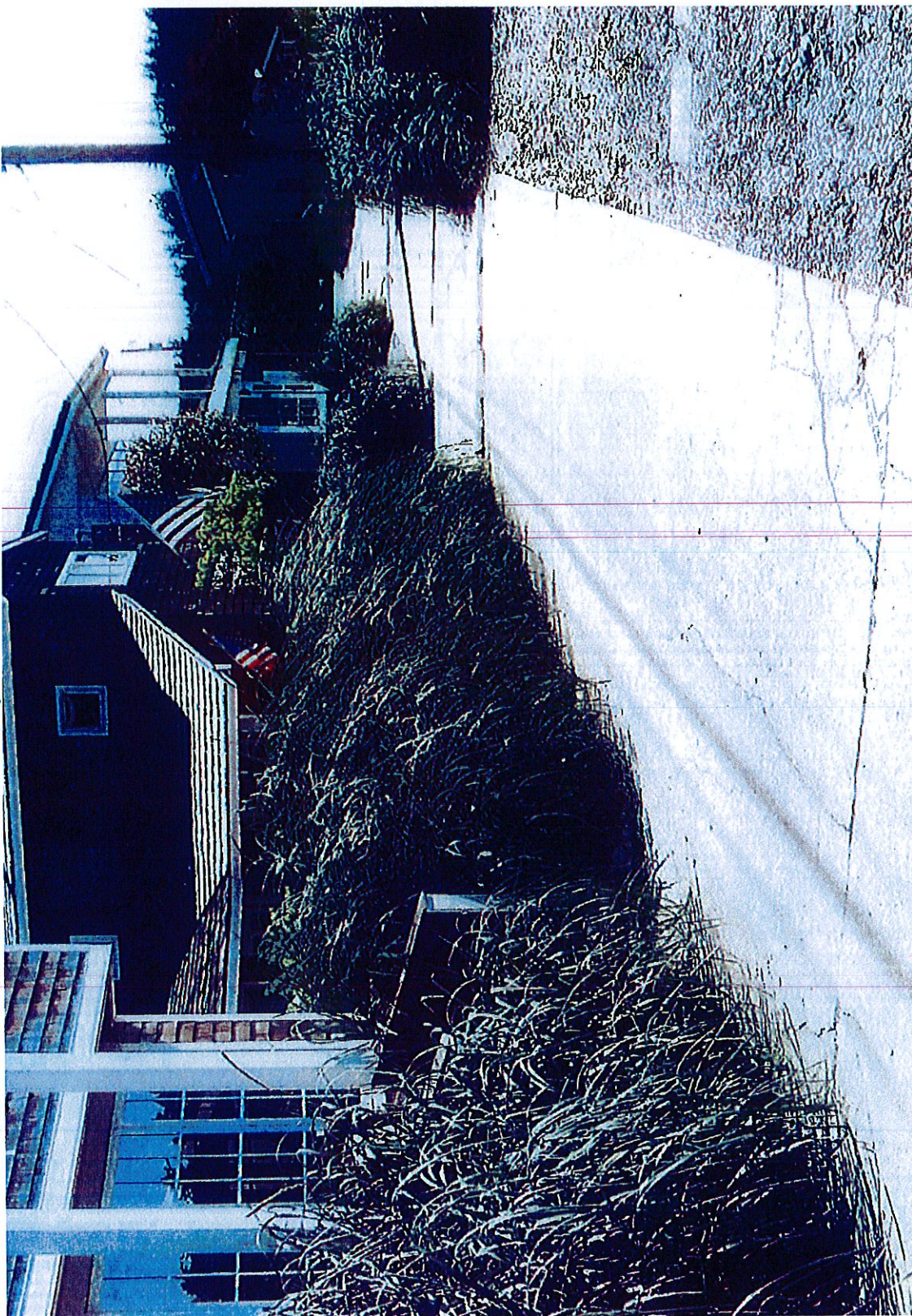


Exhibit G

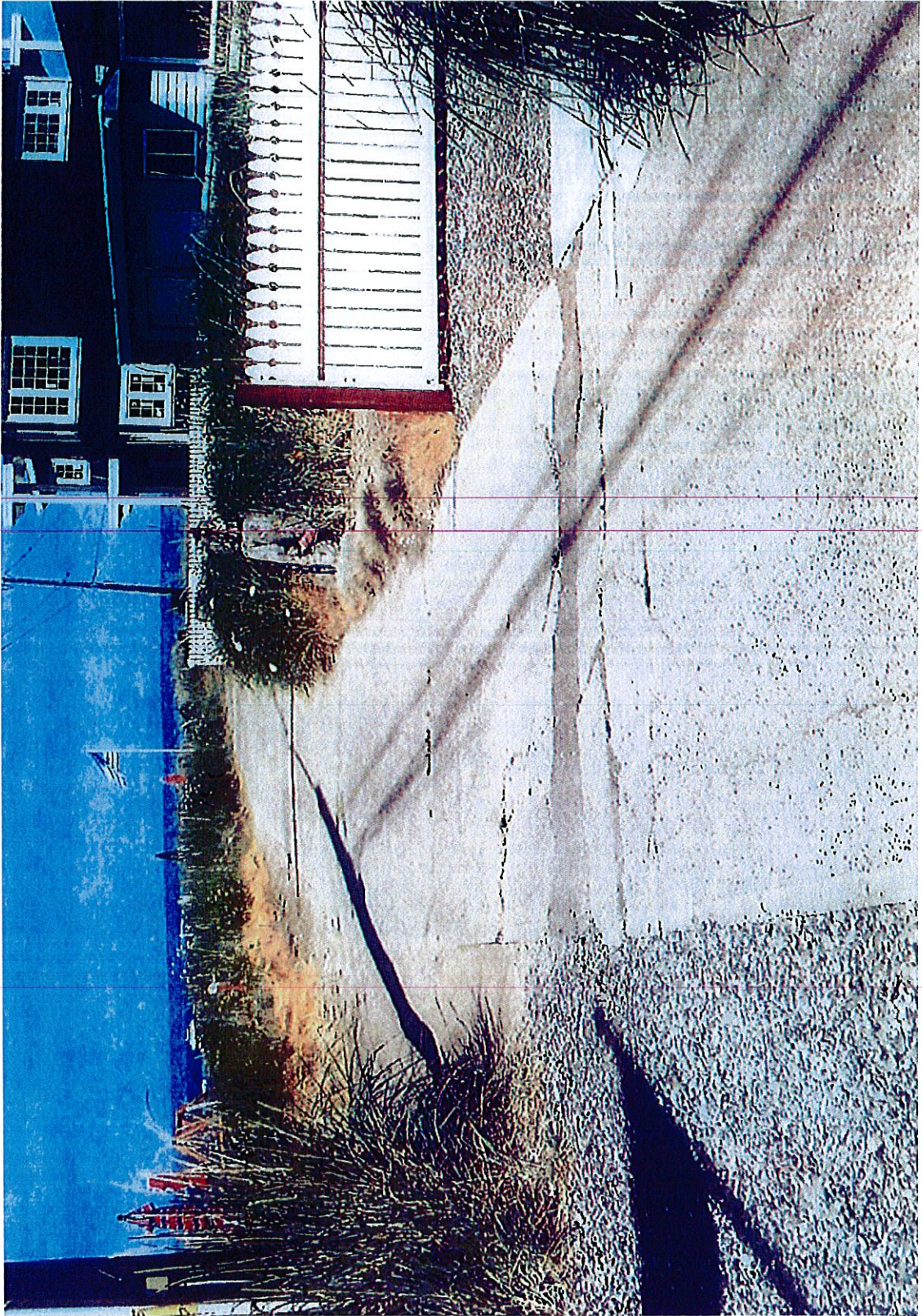


Exhibit H

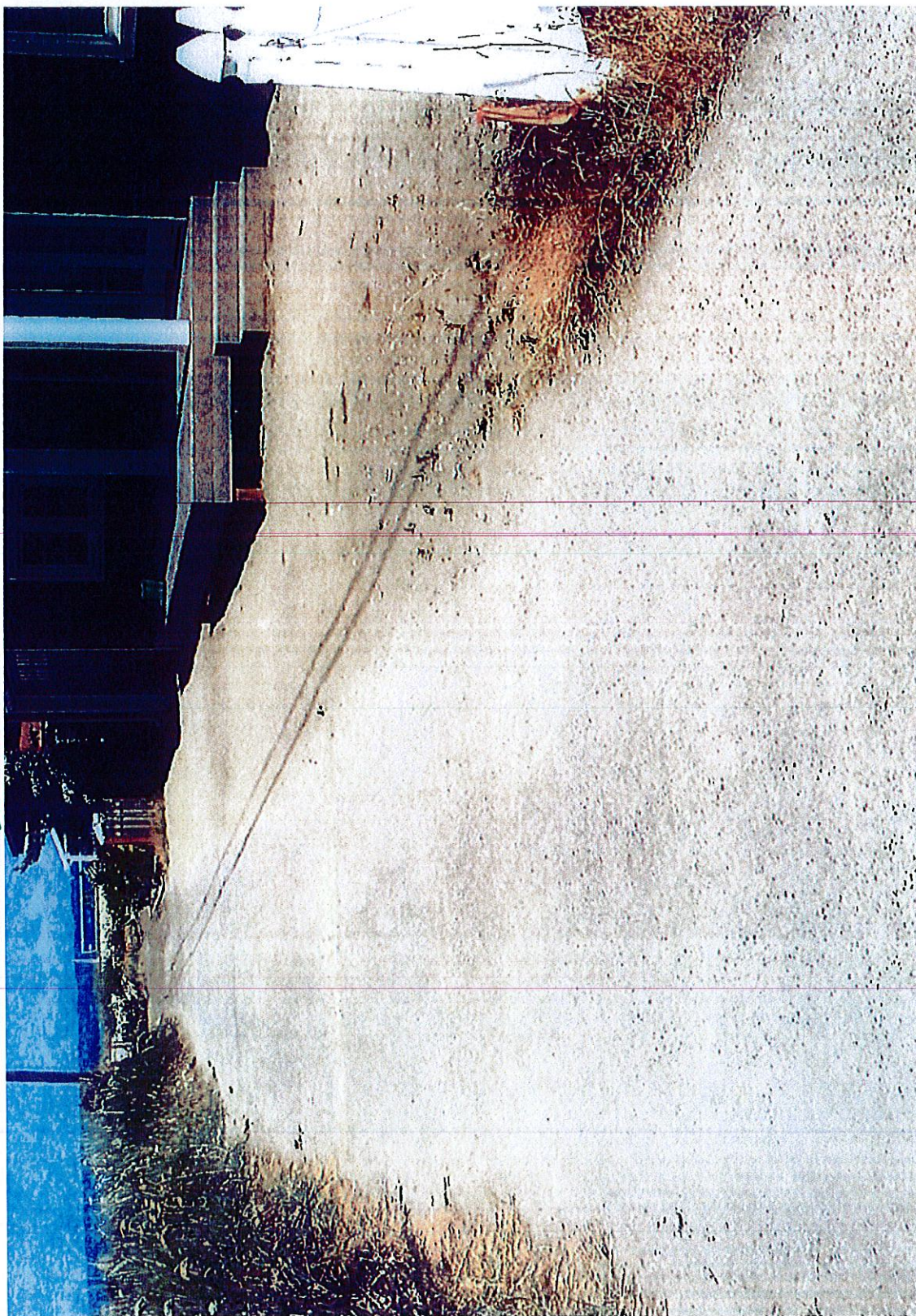


Exhibit I

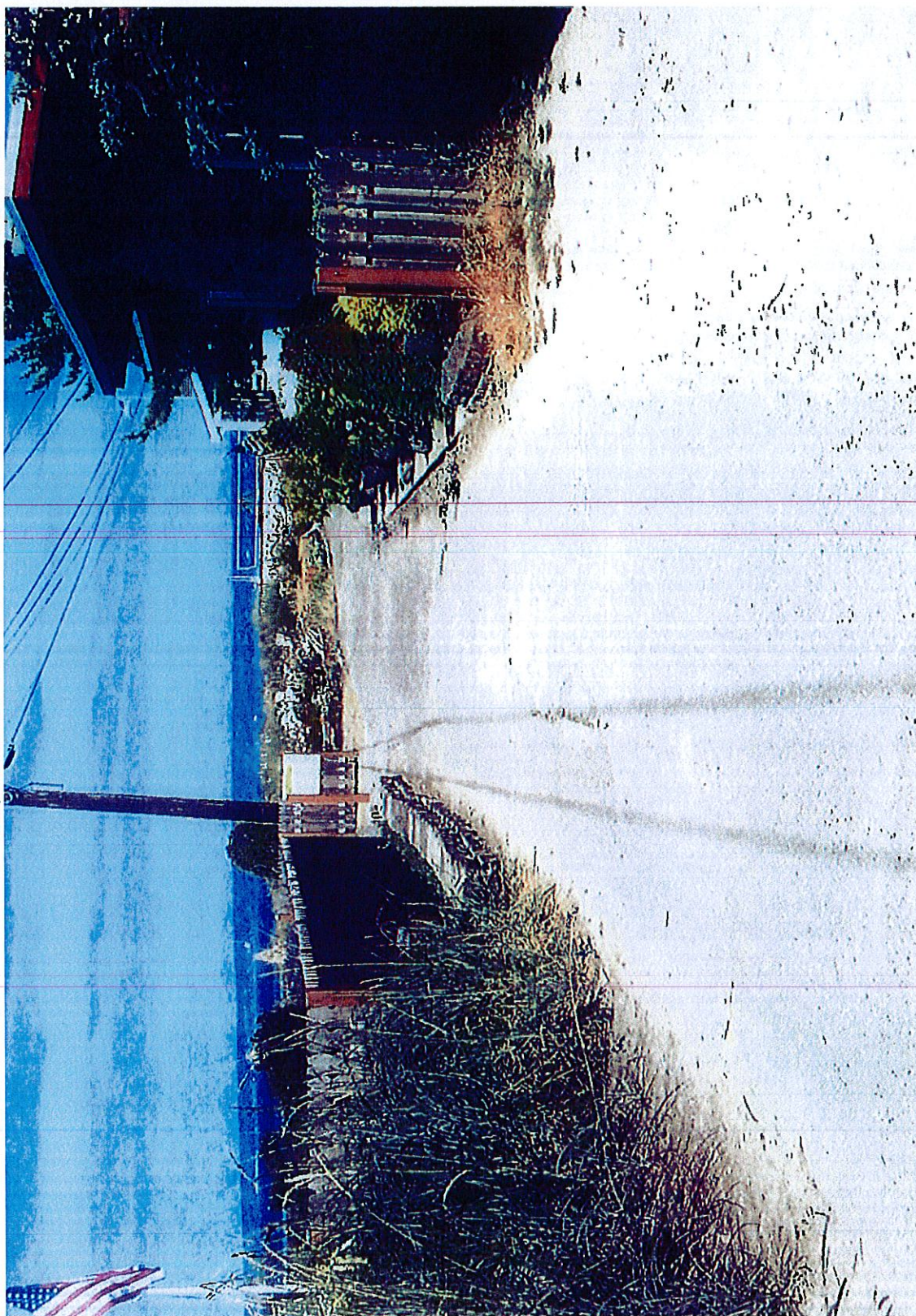


Exhibit J

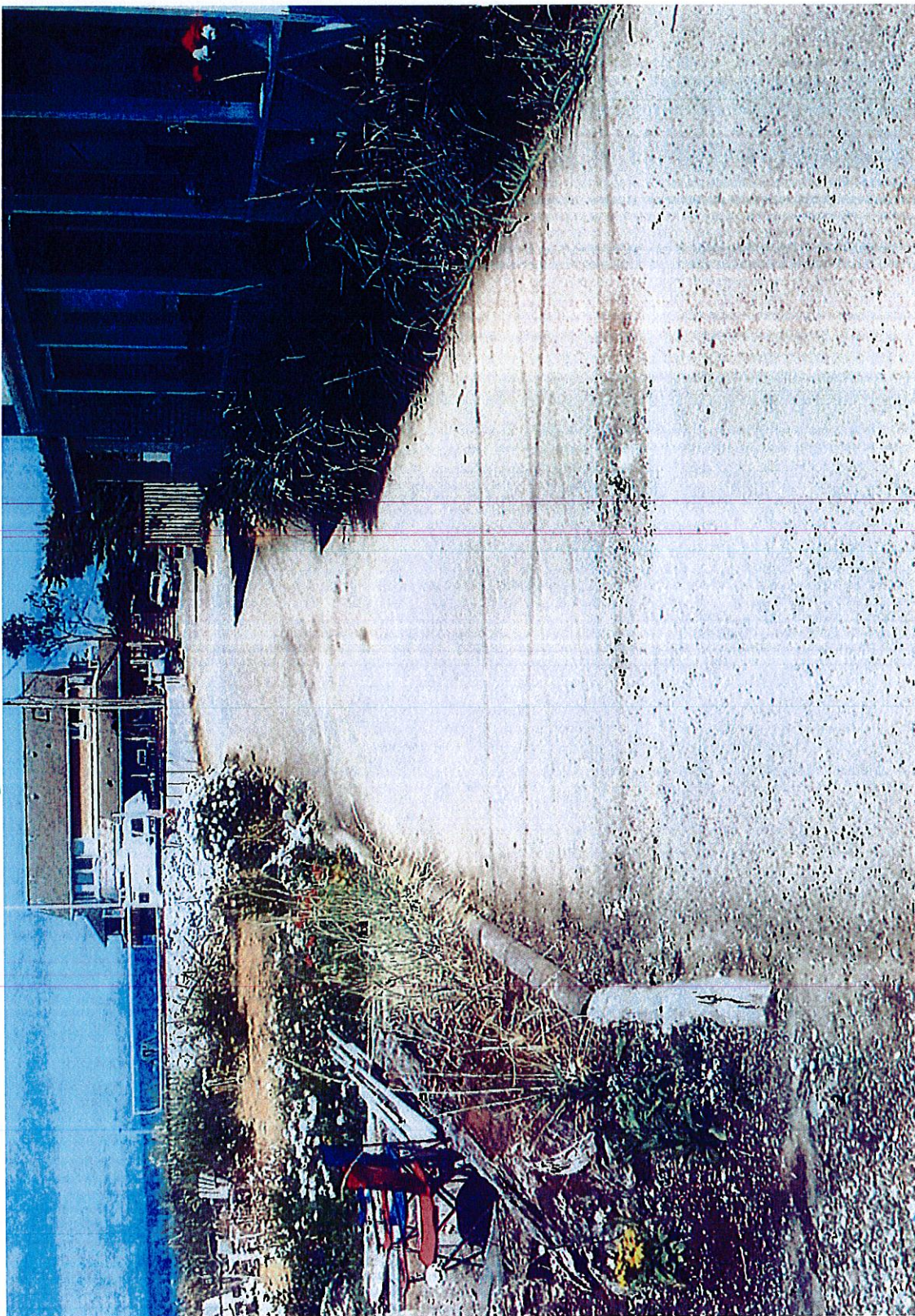


Exhibit K



Exhibit L

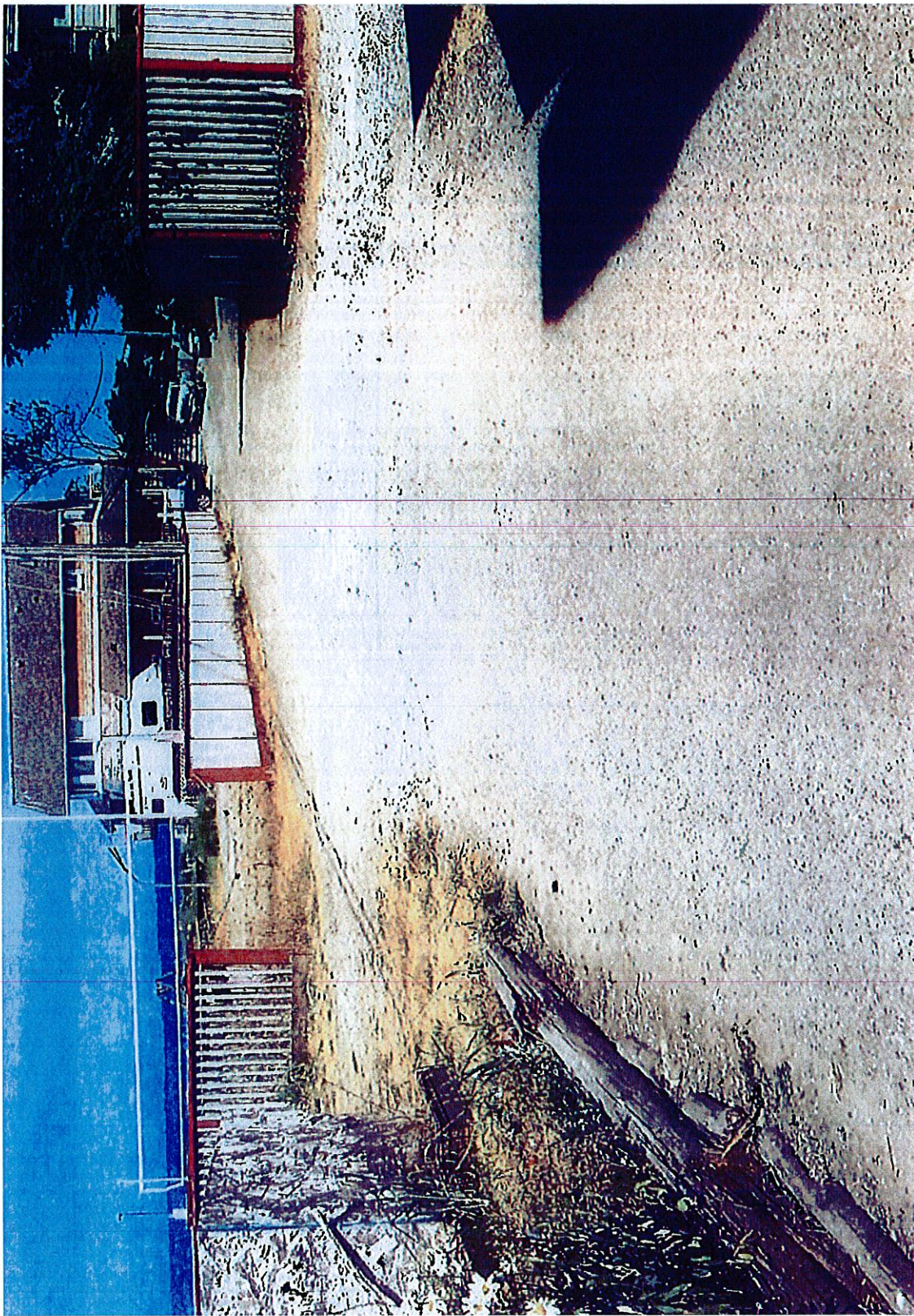


Exhibit M



Exhibit N



Exhibit O

